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Report to the Vice-Chairman,
Committee on the District of Columbia,
House of Representatives

December 1990

DISTRICT OF COLUMBIA

Information on Court- Ordered Tenant Evictions

AD-A267 327



93-17026



General Government Division

B-242125

December 28, 1990

The Honorable Stan Parris
Vice Chairman, Committee on the
District of Columbia
House of Representatives

Dear Mr. Vice Chairman:

This report responds to your request for information on court ordered tenant evictions in the District of Columbia. Specifically, you asked us to determine (1) the time that elapsed between the landlord's filing of an eviction request, the court issuance of the eviction order, and the carrying out of the eviction by U.S. deputy marshals for evictions carried out in fiscal year 1990; (2) reasons for the elapsed times; and (3) whether using contractors to carry out evictions, instead of deputy marshals, would be legal and appropriate.

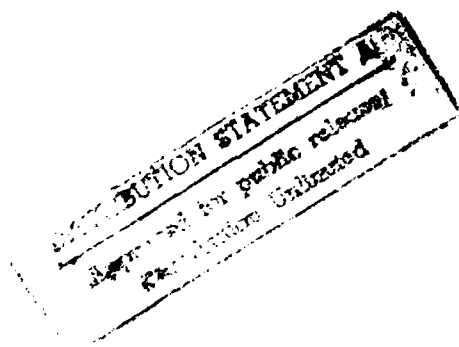
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Background

To evict tenants, landlords must first have a writ of restitution (referred to as an eviction order) issued by the Landlord and Tenant Branch of the District of Columbia Superior Court. The landlord files a complaint for possession of real estate with the court, which is to set a hearing date for not less than 3 weeks from the date the complaint was filed. In the interim, the landlord is responsible for having the tenant served with the complaint and notified of the scheduled hearing. If the landlord prevails at the hearing or at any trial that might occur, judgment for eviction occurs. If not stayed (deferred) pending tenant compliance with an agreement to pay the rent due, the eviction order is to be issued and sent for execution to the U.S. Marshal for the District of Columbia. The marshal is under the supervision of the Attorney General and the United States Marshal Service (USMS), an agency within the Department of Justice. In performing evictions and other duties for the court, the marshal serves in a role typically filled by a sheriff in other jurisdictions.

Upon receipt of the eviction order, the marshal is to stamp on the order the period of time (3 to 35 calendar days) during which the eviction could be executed, notify the tenant of this, and file the order by the applicable District geographic quadrant (e.g., northwest). Evictions are scheduled by quadrant, with priority given to the oldest orders. They are carried out by deputy marshals, who supervise the movement of property from the premises to street curb by laborers provided by the landlord. If an eviction is not done within the 35-day time limit and is

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still wanted, the landlord must have the order reissued by the court. A reissued order is referred to as an alias writ.

The eviction process is described in more detail in appendix I and illustrated in appendix II. Overall statistics on eviction orders issued and their disposition during fiscal year 1990 are included and explained in appendix III.

Results in Brief

The marshal performed 2,966 evictions in the District of Columbia during fiscal year 1990. An average of 114 calendar days (about 4 months) elapsed from the date landlords requested evictions and when they were done. On average, 62 calendar days elapsed from the landlord's complaint to the court issuance of the eviction. There are no overall criteria on how long the court's part of the eviction process should take. The marshal's portion of the eviction process averaged 52 calendar days. The marshal completed about 54 percent of the evictions under the initial order, which has a 35-day time limit; the process took an average of 25 days from issuance of the order to the actual eviction. The remaining evictions involved reissued orders, which averaged 83 days from the date of the initial order to the actual eviction.

Delays in the eviction process occurred for a variety of reasons. In the court's part of the process, delays occurred because issuance of the eviction order was stayed for a period of time because the tenant agreed but subsequently failed to pay the rent due, or the case went through a trial. In the marshal's part of the process, delays occurred because evictions were not carried out on bad weather days, holidays, and weekends; few deputy marshals were assigned to evictions; or the landlord failed to comply with arrangements agreed to with the marshal (e.g., failed to have agreed-upon number of movers present when deputy marshals arrived at the eviction site).

A legal barrier exists to contracting out the marshal's part of the eviction process. The Department of Justice's 1991 appropriation act prohibits any contracting out in fiscal years 1991 and 1992 for law enforcement or litigating purposes without specific congressional approval. If not for this law, USMS officials believe that contracting out for evictions would probably be legal. However, they would not want to do so without the approval of the court and the Department of Justice.

USMS officials maintain that contracting out is not needed given the additional staff they will be able to assign to evictions. On the basis of eviction and other workload problems, Congress authorized 24 additional deputy marshals in October 1990 and another 17 are expected to come on board in January, 1991. Consequently, the marshal plans to assign sufficient deputies so that the eviction backlog will be generally limited to eviction orders under 3 days old and orders that have not been carried out for uncontrollable reasons, such as bad weather. Officials in USMS and the marshal's office believe they will be able, with the additional staff, to execute all orders within the initial 35-day period except those for which nonservice was the fault of the landlord or other uncontrollable reasons.

Objectives, Scope, and Methodology

To obtain elapsed times, we randomly sampled 277 of the 2,966 evictions we determined were done during fiscal year 1990.¹ We arrived at the total number of evictions by reviewing USMS' daily eviction lists and accounting for all days on which evictions were performed during the year. For each eviction sampled, we reviewed the individual case files maintained by the court and recorded, among other things, the dates the eviction was requested, ordered, and carried out.

To determine reasons for the elapsed times, we interviewed court and USMS officials and reviewed court and USMS documentation on how the eviction process is supposed to work and how it was carried out during fiscal year 1990. We also determined if the evictions in our sampled cases had involved a trial, a stay because of a tenant's promise to pay the rent that was due, or the issuance of an alias order. We compared elapsed times for these evictions with evictions not involving these factors. When the information was available, we also recorded why reissued orders had not been previously carried out.

The decision to limit the file review to evictions performed was based on both availability of data and time constraints. Because cases ending in eviction may be quite different from the larger universe of all complaints filed or all eviction orders issued, our sample allows us to generalize only about cases resulting in actual evictions. Unless otherwise noted, all sampling errors are less than 9 percent of the estimate, at the 95 percent confidence level. In other words, except where noted, the chances are 19 out of 20 that if we had analyzed all 2,966 evictions, the

¹The original sample consisted of 301 evictions, but 24 files could not be located, resulting in a sample size of 277.

results would differ from our sample results by less than the 10-percent sampling error. (See app. IV for sampling error figures.)

To determine any barriers to having a contractor perform the eviction functions now performed by the marshal, we requested the views of USMS and the Superior Court on any legal issues the idea would raise and on the appropriateness of such an endeavor. We also asked the Office of Management and Budget (OMB) whether such contracting would be contrary to the guidance in OMB Circular A-76, "Performance of Commercial Activities." We reviewed the law establishing USMS and proscribing its duties and responsibilities; USMS' regulations; the Justice Appropriation Act for 1991 and its legislative history; the Superior Court Rules of Procedure for the Landlord and Tenant Branch; and the District of Columbia statutes relating to evictions. We also reviewed the request for eviction contract proposals USMS issued in 1986 and obtained the views of USMS officials on why a contract was never let.

We also interviewed USMS and court officials regarding any plans they had for shortening the time needed to do evictions, obtained statistics on the eviction process, and observed deputy marshals carry out two evictions and cancel a third because movers were not present.

We did the audit work from September to December 1990, in accordance with generally accepted government auditing standards.

Average of About 4 Months Elapsed Between Landlord Complaint and Eviction

We estimate that the 2,966 evictions performed by USMS during fiscal year 1990 took, on average, 114 calendar days (about 4 months) from the date the landlord filed a complaint to the day the eviction was done. Table 1.1 shows the mean, median, and range of elapsed times (1) from complaint to eviction, (2) from complaint to issuance of the eviction order (the court's part of the process), and (3) from eviction order to eviction (the marshal's part of the process).

Table 1.1: Elapsed Calendar Days for Evictions Performed October 1, 1989 - September 30, 1990

Time	Complaint to eviction	Complaint to order	Order to eviction
Mean	114	62 ^a	52
Median	99	43	35
Shortest	37	21	6
Longest	945	924	270

^aThe sampling error is ± 9 days (14.5 percent of the mean) at the 95 percent confidence level.

We did not assess the reasonableness of the elapsed times for the 1990 evictions, given the lack of overall criteria on how long it should take from complaint to eviction. Some perspective on the court's part of the process, however, is possible through an analysis of the hearing dates. Court procedures provide that the initial hearing is to be scheduled for a date not less than 3 weeks from the date the landlord files the complaint. We were able to determine the initial hearing date for all but seven of the evictions we sampled. We found that 237 of the 270 evictions (88 percent) had the initial hearing after 3 weeks. The average for all 270 evictions was 4 weeks.

Concerning the marshal's part of the process, some perspective on the reasonableness of the elapsed time is possible through an analysis of evictions based on initial and reissued eviction orders. As earlier noted, an eviction order has a time limit of 35 calendar days and must be reissued if that period expires and the landlord still wants an eviction. We estimated that 54 percent of the 1990 evictions were carried out under the initial eviction order. These evictions, on average, took 25 days from the date of the eviction order. Those involving eviction orders that had to be reissued took about 83 days, which means the order, on average, had been reissued twice.

Factors Lengthening Time Needed to Complete Eviction Process

Our analysis of the steps required in the eviction process, discussions with court officials and deputy marshals, and review of 277 randomly sampled 1990 evictions revealed several reasons why some evictions take longer than others. As far as the court's part of the eviction process is concerned, stays and trials are major factors affecting elapsed time. We estimate that stays were involved in about 33 percent of the fiscal year 1990 evictions. For our sample, these cases took, on average, 97 days from complaint to the issuance of the eviction order versus an elapsed time of 46 days for the cases not involving a stay.

While trials do not occur often, they do significantly affect the elapsed time. Trials were held in 10 of the 270 sampled evictions (about 4 percent) where we could determine whether a trial occurred. These 10 cases took, on average, 112 days from complaint to the issuance of the eviction order versus an elapsed time of 61 days for the orders not involving a trial.

According to a court official, another factor affecting elapsed time in the court's part of the process is the failure of landlords to take required actions, such as assuring that a complaint is properly served on the

tenant prior to the initial hearing. However, information on the frequency and impact of this factor was not available.

Concerning the marshal's part of the eviction process, we identified three major reasons for delays in executing evictions. First, the number of evictions depends on the number of days on which evictions are done. We determined that evictions were performed on 173 days during fiscal year 1990. Table 1.2 shows the number of days on which evictions were not done and why.

**Table 1.2: Noneviction Days During
Period October 1, 1989 - September 30,
1990**

Reason	Number of days		Total nonevict. days
	Evictions not scheduled	Evictions scheduled but not done	
Weekend	105	•	105
Holiday (non-weekend)	10	•	10
Bad weather	•	58	58
Operational (e.g., training)	2	4	6
Unknown	12	1	13
Totals	129	63	192

As shown, evictions are not scheduled for weekends and holidays, and bad weather is the primary reason for canceling scheduled eviction days. USMS defines bad weather as a 50-percent chance of rain or an expected temperature below 25 degrees Fahrenheit. The weather forecast is obtained from the National Weather Service early on the scheduled eviction day.

Of the 13 days shown in the table as unknown reasons, 9 occurred in November and December 1989; this may reflect the marshal's policy of not doing evictions around the Thanksgiving and Christmas holidays. These 2 months had 108 and 98 evictions respectively, compared to the next lowest month (181) and a monthly average of 247 for all of fiscal year 1990.

A second major factor affecting the marshal's part of the eviction process is the number of deputy marshals assigned to evictions. Officials told us that they generally had four deputies (two teams) doing evictions out of an authorized staff of 37 deputies during fiscal year 1990. They believe that two deputies should be present at each eviction so that one is inside and the other outside the premises to fully observe all aspects of the eviction. As to the overall number of deputies assigned to evictions, we were told that the remaining deputies were needed on

other duties, such as providing courtroom security and transporting prisoners.

We cannot determine how much time the deputy marshals spent on evictions in fiscal year 1990. This information is not separately recorded on overall reports or on individual deputies' time and attendance records.

Officials in the marshal's office told us that on various days during fiscal year 1990 there were more than two teams working on evictions, but they could not tell us how often this occurred. Residential evictions are scheduled to take 1 hour and are generally scheduled to start from 9 a.m. to 3 p.m. Business evictions could be scheduled for longer than 1 hour. Some evictions may take longer than the scheduled time, causing the deputies to run behind schedule and to work a longer day than planned. These factors suggest that a team can accomplish up to 7 evictions a day; 2 teams can do 14. During fiscal year 1990, there were 59 days when 14 or fewer evictions were done and 114 days when over 14 evictions were done. The average number of evictions carried out per day was 17.

Various factors could cause a team to do more or fewer evictions than seven a day. Sometimes two evictions are carried out at about the same time when, for example, two apartments in the same building are to be evicted. Also, some evictions take less than an hour, since the tenant has already vacated the premises, requiring only a "walk-through" by the deputy marshals, or since the eviction involves the removal of a small amount of personal property. On the other hand, instead of being assigned to an actual eviction, the deputies sometimes perform pre-eviction surveys to determine special arrangements that may be needed before scheduling the eviction. This generally occurs when a business is involved.

A third major factor affecting elapsed time in the marshal's area is the landlord's failure to follow through on agreed-upon arrangements for the evictions. Officials in the marshal's office told us that landlords often are a cause of delays in executing evictions. For example, the landlord may not have the required number of movers on hand when the deputies arrive at the eviction scene, despite having previously agreed on the number of movers to be present. If there are not enough movers, the eviction is not done, and the eviction order is canceled and returned to the court. If the landlord still wants the eviction done, the order must be reissued.

There are other factors that affect how long the marshal takes to perform evictions. For example, we were told that an increasing number of evictions involve suspected "crack houses." These evictions entail working out cooperative arrangements with the District's police department.

Although there is no indication that it affected elapsed time in fiscal year 1990, the marshal does have an agreement with the District's Department of Human Services to do no more than 60 evictions a day. According to USMS, the Department believes that any higher number would overburden its ability to provide emergency shelter for those evicted tenants who need it.

Contracting for Evictions Is Prohibited Without Specific Congressional Approval

The marshal is currently prohibited from contracting out for evictions without congressional approval. The Department of Justice Appropriation Act for 1991 prohibits any contracting out in fiscal years 1991 and 1992 for law enforcement and litigating activities of USMS as well as other components of the Department of Justice unless the contracting out proposals are specifically approved by an Act of Congress. (Pub. L. No. 101-515, section 212). The conference committee said that:

"The enforcement of Federal law is an inherently governmental function which should not be contracted out to private industry. Furthermore, there are concerns that, after a decade in existence, in many instances, contracting out programs have failed to produce both desired management improvements and projected savings. Under the conference agreement, no positions, workyears or associated funding for the law enforcement and litigating components of the Department of Justice associated with contracting out initiatives can be reduced unless specifically approved by the Congress. The conferees agree that it is incumbent upon the Administration to prove that future privatization proposals will produce savings and management improvements before such proposals are submitted to and approved by the Congress." H.R. Rep. No. 909, 101st Cong., 2nd Sess. 52, 53 (1990).

Besides the aforementioned prohibition, USMS officials told us that contracting out would probably be legal but it would be subject to challenge for a number of reasons. Thus, they would not agree to contracting out without first obtaining the approval of the Superior Court and the Department of Justice.

Because of the short time frame for doing our work, we have not been able to develop and analyze all the information necessary to determine if, except for the prohibition in the appropriation act, contracting out

would be legal or appropriate. OMB's preliminary views are that contracting out for evictions along the lines described in USMS' 1986 request for contract proposals would be inappropriate. OMB is concerned about (1) the possibility of private persons operating under color of law and having to deal with violent persons on the premises and (2) the extent to which the judgment of these persons may limit or eliminate appropriate government discretion. The Superior Court informed us that it would be inappropriate for the court to take a position on the contracting out issue.

While at one time they favored the idea of having contractors do evictions, USMS officials now believe that there is no need to contract out. On the basis of eviction and other workload problems, additional deputy marshals are being assigned to the District. In October 1990, 24 new deputies completed training and became operational; another 17 are expected to become operational in January 1991.

Consequently, the marshal plans to assign sufficient deputies so that the eviction backlog will be generally limited to eviction orders under 3 days old and orders that have not been carried out for uncontrollable reasons, such as bad weather. Officials in USMS and the marshal's office believe they will be able, with the additional staff, to execute all orders within the initial 35-day period except those for which nonservice was the fault of the landlord or for other uncontrollable reasons. They believe this will be achieved in January when they expect to have 8 to 10 teams carrying out evictions.

We discussed the information in this report with the head of the Court's Landlord and Tenant Branch, the Marshal and the Chief Deputy Marshal for the District of Columbia, and USMS' general counsel, who generally agreed with the facts presented.

As arranged with the committee, we plan no further distribution of this report until 30 days after the date of this letter, unless you or your successor as Vice Chairman publicly announce its contents earlier. As that time, we will send copies to the Superior Court, the District Marshal, USMS, and other interested parties.

Major contributors to this report are listed in appendix V. If you have any questions about this report, please call me on 275-8389.

Sincerely yours,

A handwritten signature in cursive script that reads "Lowell Dodge". The signature is written in dark ink and is positioned above the printed name and title.

Lowell Dodge
Director, Administration
of Justice Issues

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Abbreviations

OMB	Office of Management and Budget
USMS	United States Marshal Service

The Eviction Process

In general, the eviction process begins with the landlord or the landlord's representative filing a complaint for possession of real estate. (According to a court official, about 69,000 complaints were filed during fiscal year 1990.) Court officials will assign a case number to the complaint and set a hearing date for not less than 3 weeks from the complaint date. In the interim, the landlord is responsible for having the tenant served with the complaint at least 7 full days before the hearing date (excluding Sundays and legal holidays). An affidavit of service must be filed with the court at least 4 days before the hearing.

While some hearings result in the judge granting a landlord or tenant request for a trial, most result in either an agreement reached between the landlord and the tenant or a default judgment. On the day of the hearing, the landlord and tenant may reach a settlement through negotiation. In a settlement, the tenant often agrees to pay rent due. When such an agreement is reached, the court enters judgment for the landlord but defers (stays) issuing the eviction order as long as the tenant complies with the agreement. *If the tenant fails to comply, the landlord may request the court to issue the eviction order.* The tenant is to be notified of the landlord's intent to do so.

A default judgment is entered when the tenant fails to appear for the hearing. The eviction order can be issued 2 days after the judgment, giving the tenant time to appeal.

The U.S. Marshal for the District of Columbia is responsible for scheduling and executing all eviction orders issued by the District's Superior Court. Essentially, the marshal serves in the role typically served by a sheriff in other jurisdictions. The marshal is under the general supervision of the Attorney General and USMS.

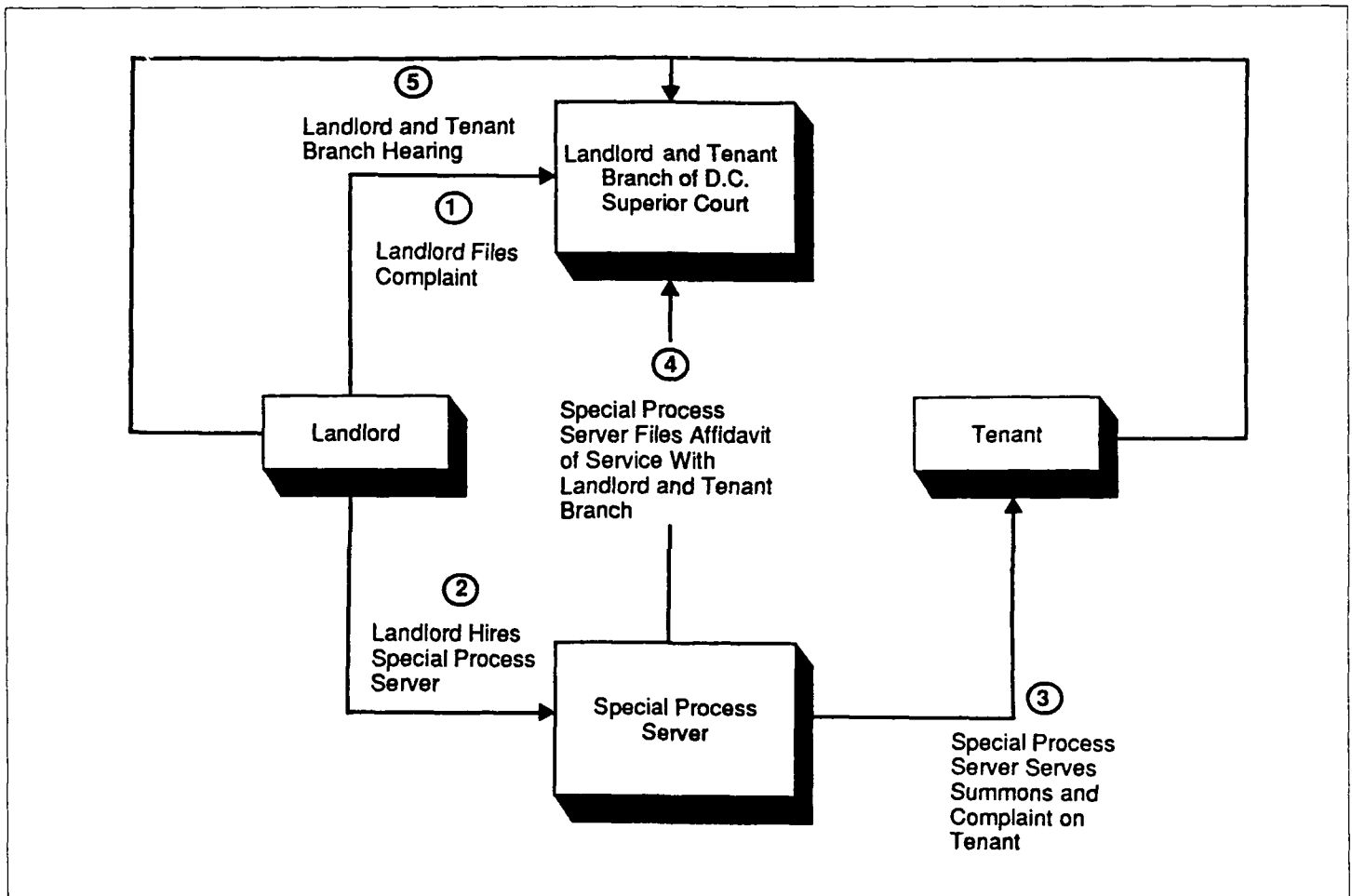
As the system is designed, the marshal receives eviction orders for the court twice daily, stamps the period of time for service on the top and bottom parts of the order, and mails the bottom part to the tenant. Eviction orders can be served from 3 days (72 hours) up to 35 calendar days from the date of the order. This time span includes weekends and holidays, with one exception: The final day cannot be on a weekend or holiday. If the order is not served or otherwise canceled during that period, it expires and the landlord must have it reissued if the eviction is still wanted. The reissued orders are also good for 35 calendar days. The tenant does not have to be advised of the landlord's intent to have the order reissued unless 90 days have elapsed since the date of the judgment or the date any stay was lifted.

Appendix I
The Eviction Process

The eviction orders are scheduled for service by geographic quadrant (e.g., northwest portion of the District), with the oldest orders being done first. Each eviction involves two deputy federal marshals who oversee movers arranged and paid for by the landlord. The landlord is to arrange for a sufficient number of movers so that the eviction can be completed in 1 hour. The marshal and the landlord determine the number of movers needed.

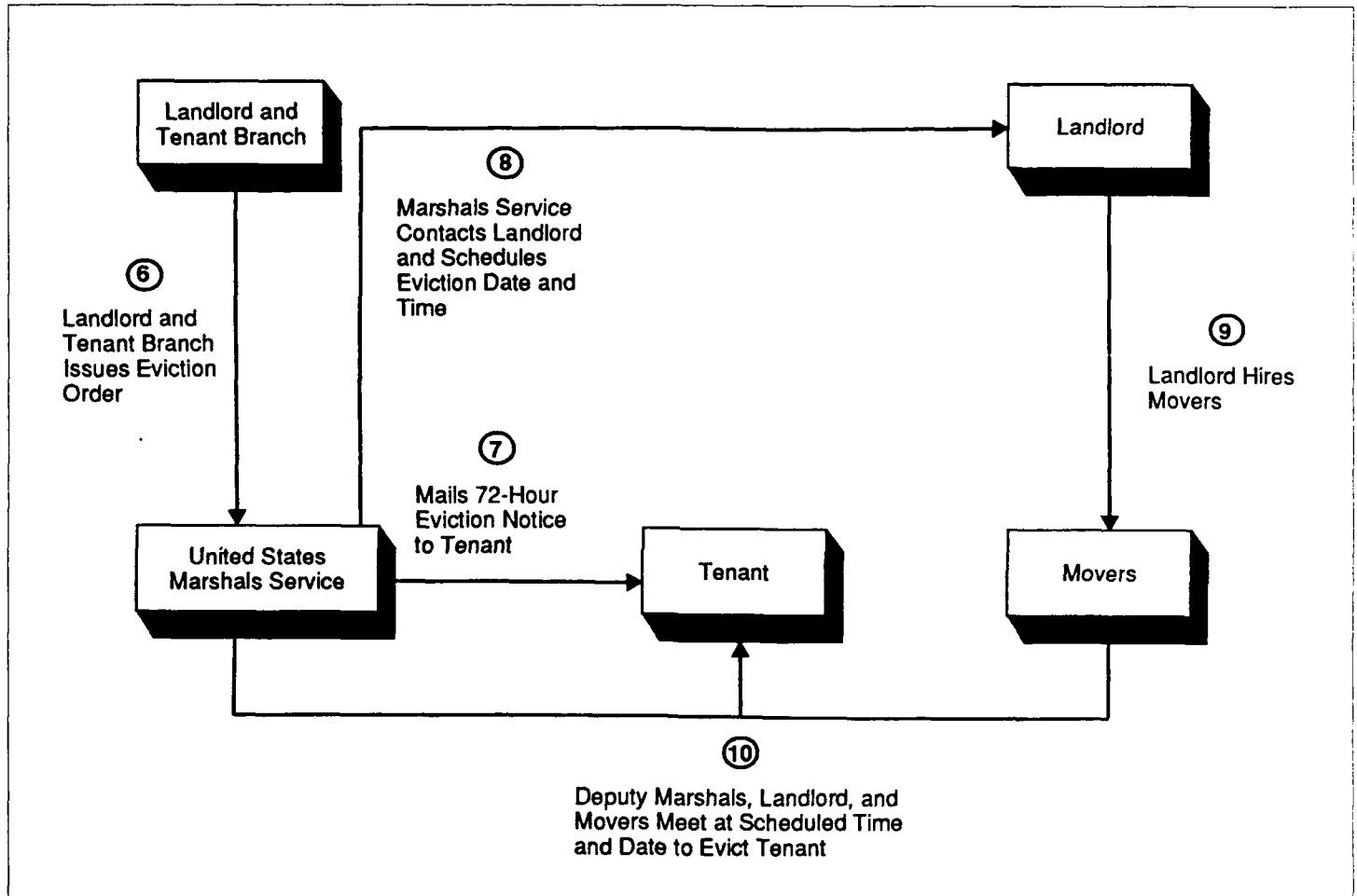
The Eviction Process Illustrated

Figure II.1: The Court's Part of the Eviction Process



Appendix II
The Eviction Process Illustrated

Figure II.2: The Marshal's Part of the Eviction Process



Eviction Orders Subject to Service and Their Disposition During Fiscal Year 1990¹

On hand at beginning of fiscal year		1,392
Received during the year		20,289
Available for disposition		21,681
Returned to the court during the year		
Evictions performed	2,966	
Cancelled after being scheduled for execution by USMS ^a	3,116	
Cancelled by landlords before being scheduled for execution ^b	5,514	
Expired-not executed within 35 days of issuance ^c	8,650	20,246
On hand at end of fiscal year		1,435

^aReasons for cancellation include incorrect names or addresses on the eviction orders, payment of rent by tenants, and failure of landlords and/or movers to be at eviction sites at scheduled times

^bNormally results when tenants pay rent.

^cReasons include bad weather limiting the number of days on which evictions can be performed, deputies normally working evictions being assigned to higher priority duties, too few deputies being assigned to evictions, and difficulty in scheduling dates and times with landlords for performing evictions.

¹Numbers include both initial and reissued (alias) eviction orders.

Sampling Errors for Estimates Used in This Report

Table IV.1: Confidence Intervals for Duration Estimates (In Days)^a

	Lower bound	Estimate	Upper bound
Full Sample (277 cases)			
Complaint to first eviction order	53	62	71
First order to eviction	47	52	57
Complaint to eviction	104	114	124
Complaint to hearing	27	28	29
Cases where first order was executed (146 cases)			
Order to eviction	23	25	27
Cases with alias orders (126 cases)			
Order to eviction	76	83	90
Cases with stays (88 cases)			
Complaint to order	70	97	124
Cases with no stays (182 cases)			
Complaint to order	42	46	50
Cases with trials (10 cases)			
Complaint to order	84	112	140
Cases with no trials (260 cases)			
Complaint to order	51	61	71

^aThe confidence interval is the estimate plus or minus the sampling error. Some numbers are based on less than the complete number of cases cited due to missing data

Table IV.2: Confidence Intervals for Population Estimates for Number of Cases With Conditions Met (Population=2,966)^a

	Lower bound	Estimate	Upper bound
Initial order executed	1,398	1,563	1,728
Trials	45	107	169
Stays	788	942	1,096
Initial hearing more than 3 weeks after complaint	2,430	2,538	2,646

^aThe confidence interval is the estimate plus or minus the sampling error.

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